

DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268

RECEIVED

APR 10 12 23 PM '98

U.S. DEPARTMENT OF COMMERCE  
POSTAL SERVICE

\_\_\_\_\_  
Postal Rate and Fee Changes, 1997  
\_\_\_\_\_

)  
)  
)  
Docket No. R97-1.

**REPLY BRIEF OF RIAA, ET AL.**

The Recording Industry Association of America and Advertising Mail Marketing Association ("RIAA, et al.") submit this brief in reply to arguments made by the Postal Service concerning the testimony sponsored by RIAA, et al. of Gary M. Andrew (RIAA, et al.-T-1, Tr. 22/11645-78.

The Postal Service, and only the Postal Service, challenges the analysis by which Dr. Andrew reached the conclusion that the proposed ten cent surcharge for Standard (A) mail that is neither letter shaped nor flat shaped or is prepared as a parcel is inappropriately large. The Initial Brief of the United States Postal Service ("USPS Brief") misunderstands Dr. Andrew's testimony in ways that are significant and seeks to contradict Dr. Andrew's testimony in ways that are not significant.

It is not true, for example that "Witness Andrew finds a revenue difference of 24.6 cents per piece and compares that to Witness Crum's adjusted cost difference of 33.4 cents per piece, yielding a difference of 8.8 cents, to conclude that the 10-cent surcharge is not justified." USPS Brief at V-163. Dr. Andrew's testimony is that:

The maximum surcharge for parcels that can be justified using Witness Crum's methodology and available data is 3.2 cents per piece (33.4 cents per piece less the revenue differential of 24.6 cents per piece, the overstatement in mail processing costs of 2.3 cents per piece and the

overstatement of transportation and vehicle service drivers costs of 3.3 cents per piece);

Tr. 22/11651 ll. 17-21.

The USPS Brief is right in noting that the single most important (in terms of magnitude) of Dr. Andrew's adjustments to Mr. Crum's analysis of the flat/parcel differential is the inclusion of the very substantial difference in average revenue per piece between flats and parcels. The USPS Brief, like the rebuttal witness (McGrane) put on by the Postal Service to challenge Dr. Andrew, quibbles about precisely what numbers should be compared with what numbers in order to calculate the most meaningful flat/parcel differential. However, there is no contest with the conclusion that revenues as well as costs must be included in the calculation. In the RIAA, et al. initial brief, we demonstrated that arguments can be made for a variety of different net differential calculations. These yield parcel/flat differentials ranging from the 3.2 cents calculated by Dr. Andrew to 10.1 cents employing one of Mr. McGrane's suggested calculations. The short of it, however, is that the net costs of the acceptance, handling and delivery of parcels is very much closer to the net costs associated with flats than Mr. Crum would lead one to believe.

The USPS Brief does take issue with the two cost-side adjustments to the Crum analysis advocated by Dr. Andrew. The first of these was a fairly technical problem with the methodology employed by the Postal Service to distribute non-MODS office mail processing costs among letters, flats and parcels. The methodology endorsed by the Postal Service took the average volume variability from all MODS offices and applied it to each cost pool in every non-MODS office. As demonstrated by a hypothetical

illustration prepared by Dr. Andrew (Tr. 36/11712), this methodology is very likely to lead to rather extreme cost distortions. In order to avoid those distortions, Dr. Andrew distributed every dollar of the non-MODS office mail processing costs among letters, flats and parcels based on the number of pieces in each mail shape category.

The USPS Brief invokes the rebuttal testimony of Mr. Degen to counter Dr. Andrew. As we pointed out in the initial brief for RIAA, et al., the testimony offered by Mr. Degen simply does not engage Dr. Andrew's analysis, other than to endorse it as theoretically valid.

The USPS Brief criticizes what Dr. Andrew did as creating "variabilities . . . simply too low to be believed." USPS Brief at V-165. The method that the USPS Brief employs to reach that conclusion makes no sense. It violates Dr. Andrew's admittedly "theoretically valid", Tr. 36/19363 (Degen) objections to the Postal Service's methodology by employing the 79 percent average MODS office volume variability. It proceeds to multiply that number by the ratio of the costs of, respectively, flats and parcels as they are measured by Dr. Andrew's redistribution and as they are measured by the theoretically invalid Postal Service methodology. Just what the resultant number is supposed to represent is a profound mystery to us. That number certainly does not invalidate the theoretical integrity of Dr. Andrew's objection to the Postal Service's calculation, or his common sensical substitution of a per/piece redistribution of non-MODS office costs in order to avoid the taint of the Postal Service's admitted mistake.

Equally, Dr. Andrew was right in urging the Commission to use data concerning the density of parcels (for the purpose of distributing transportation costs to parcels)

taken from Docket No. MC95-1, just as Mr. Crum used those data to determine the cubic volume for flats and letters. The Postal Service argues that a newer study from Docket No. MC97-2 yields better information on parcel densities.

The fact that the newer study yielded results “close to the long calculated density of 7.0 pounds per cubic foot for parcel post” is not persuasive. There is no evidence in the record of this case (or any other of which we are aware) demonstrating the comparability of Standard (A) parcels and parcel post.

Mr. Crum testified that the new study ran the risk of mischaracterizing flats as parcels and parcels as flats. Tr. 5/2384. Mr. Crum testified that the individual piece measurements instrumental to the density calculations in the most recent survey were subject to interpretation, Tr. 17/8047-48, and that human error, or difference of interpretation, was more likely in the survey on which he relied than the MC95-1 methodology. Tr. 17/8062-63. Dr. Andrew quantified the consequences of mis-measurement of a parcel as to which Mr. Crum conceded that different measurements were possible, showing that density could be significantly understated. Tr. 22/11668. Dr. Andrew also testified to a physical phenomenon likely to bias the most recent study toward the selection of the least dense pieces in the container from which the sample was drawn. Tr. 22/11670-71. Although the USPS Brief seeks to make light of this presentation, under the heading “Is There a Physicist in the House?”, it presents no contrary evidence.

Dr. Andrew was very clear that he was not seeking to use the informal survey that he made of RIAA, et al. members in a rigorous or scientific fashion. He presented

the results of his finding, which included fully 33 percent of the parcels in Standard (A) mail (response to USPS/RIAA et al.-12 (a-d), Tr. 22/11692) showing densities that were substantially higher than the MC95-1 study. All of this persuasively suggests that the study relied on by Mr. Crum was not terribly reliable.

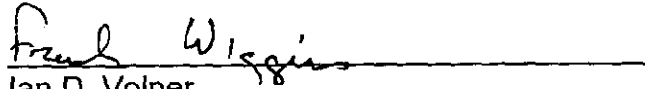
From the three looks at parcel densities of which there is a record in this proceeding, the density numbers range from the current survey's result of approximately 8 pounds per cubic foot through the MC95 survey result of 14.9 pounds per cubic foot to the informal results obtained by Dr. Andrew of just under 22 pounds per cubic foot. Dr. Andrew recommended the reasonable choice when faced with such inconsistent signals of selecting the mid-range number to use for the distribution of transportation costs. There is ample authority for such an approach. See, e.g., Association of American Publishers, Inc. v. Governors of the United States Postal Service, et al., 485 F.2d 768, 772-73 (D.C. Cir. 1973) (Rate Commission averaging of results of two methodologies producing decidedly different attributable cost figures).

Dr. Andrew's adjustment of transportation costs, resulting in a 3.3 cent decrease in Mr. Crum's estimation of parcel costs, by using the densities from the MC95-1 study, was entirely appropriate.

Mr. Crum overstated the costs of parcel handling and delivery by 5.6 cents. When coupled with consideration of the extent to which parcels produce greater revenues for the Postal Service, this cost adjustment leads to the clear conclusion that the Postal Service has very significantly overstated the net parcel/flat revenue

differential. The 10 cents surcharge advocated by the Postal Service on the strength of this incorrect calculation is not justified.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Frank Wiggins", is written over a horizontal line.

Ian D. Volner

N. Frank Wiggins

Venable, Baetjer, Howard & Civiletti, LLP

1201 New York Avenue, N.W., Suite 1000

Washington, D.C. 20005

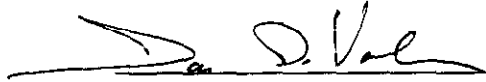
(202) 962-4957

Attorney for the Recording Industry Association  
of America and Advertising Mail Marketing  
Association

DC1:70450

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date served this document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in black ink, appearing to read "Ian D. Volner", written over a horizontal line.

Ian D. Volner

DATE: April 10, 1998

DC1:70450